

## AMENDMENT OF SECTION

*For termination of amendment by section 7004 of Pub. L. 100-418, see Effective and Termination Dates of 1988 Amendment note below.*

## AMENDMENTS

1994—Pub. L. 103-355 inserted at end “This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 428 of this title.”

1988—Pub. L. 100-418, §§7004, 7005(b), temporarily substituted “Federal agency” for “department or independent establishment”. See Effective and Termination Dates of 1988 Amendment note below.

## EFFECTIVE DATE OF 1994 AMENDMENT

Section 4301(c) of Pub. L. 103-355 provided that: “Notwithstanding any other provision of law—

“(1) section 32 of the Office of Federal Procurement Policy Act [41 U.S.C. 428], as added by subsection (a); and

“(2) the amendment made by subsection (b) [amending this section]; shall take effect on the date of the enactment of this Act [Oct. 13, 1994] and shall be implemented in the Federal Acquisition Regulation not later than 60 days after such date of enactment.”

## EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Section 7004 of title VII of Pub. L. 100-418 provided that: “The amendments made by this title [see Short Title of 1988 Amendment note below] shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979 [19 U.S.C. 2515(k)], and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.”

Section 7005(f) of title VII of Pub. L. 100-418 provided that: “The amendments made by this section [amending sections 10a, 10b, 10c, and 10d of this title and section 2511 of Title 19, Customs Duties] shall take effect upon enactment [Aug. 23, 1988].”

## SHORT TITLE OF 1988 AMENDMENT

Section 7001 of title VII of Pub. L. 100-418 provided that: “This title [enacting section 10b-1 of this title, amending this section, sections 10b, 10c, and 10d of this title, and sections 2511 and 2515 of Title 19, Customs Duties, enacting provisions set out as notes under section 10a of this title, and amending provisions set out as notes under section 10c of this title] may be cited as the ‘Buy American Act of 1988’.”

## SHORT TITLE

Section 5 of act Mar. 3, 1933, as added by Pub. L. 103-355, title X, §10005(f)(4), Oct. 13, 1994, 108 Stat. 3409, provided that: “This Act [enacting this section, sections 10b, 10b-1, and 10c of this title, and provisions set out as notes under section 10c of this title] may be cited as the ‘Buy American Act’.” [Another section 5 of act Mar. 3, 1933, is set out as an Effective Date note under section 10c of this title.]

## IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100-371, title V, §508, July 19, 1988, 102 Stat. 875, provided that:

“(a) GENERAL RULE.—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a-10c), commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

“(b) APPLICABILITY.—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988].”

## EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

## APPLICABILITY OF BUY AMERICAN ACT WITH RESPECT TO EUROPEAN COMMUNITY

For applicability of Buy American Act to procurements covered by agreement with the European Community on government procurement, see Ex. Ord. No. 12849, May 25, 1993, 58 F.R. 30931, set out as a note under section 2511 of Title 19, Customs Duties.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b, 10b-2, 10c, 10d, 42, 428 of this title; title 10 sections 2457, 2533; title 15 sections 2507, 5528; title 19 sections 2512, 2513; title 20 section 6067; title 24 section 225h; title 25 section 1638b.

### § 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 10a of this title: *Provided, however,* That if the head of the Federal agency making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a Federal agency which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such findings is made public.

(Mar. 3, 1933, ch. 212, title III, §3, 47 Stat. 1520; Aug. 23, 1988, Pub. L. 100-418, title VII, §7005(c), 102 Stat. 1553.)

## AMENDMENT OF SECTION

*For termination of amendment by section 7004 of Pub. L. 100-418, see Termination Date of 1988 Amendment note below.*

## AMENDMENTS

1988—Subsec. (a). Pub. L. 100-418, §§7004, 7005(c)(1), which directed that this section be temporarily amended by substituting “Federal agency” for “department or independent establishment”, was executed to subsec. (a) as the probable intent of Congress. See Termination Date of 1988 Amendment note below.

Subsec. (b). Pub. L. 100-418, §§7004, 7005(c)(2), temporarily substituted “Federal agency” for “department, bureau, agency, or independent establishment”. See Termination Date of 1988 Amendment note below.

## TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

## PROHIBITION ON USE OF FUNDS FOR CONSTRUCTION CONTRACTS WITH CONTRACTORS OF FOREIGN COUNTRIES WHICH DENY UNITED STATES CONTRACTORS FAIR OPPORTUNITIES IN CONSTRUCTION PROJECTS OF THAT COUNTRY'S GOVERNMENT

Provisions prohibiting the obligation or expenditure of funds to enter into any contract for construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country denies fair and equitable market opportunities for products and services of the United States in procurement or bidding for construction projects that cost more than \$500,000 and are funded in whole or in part by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country were contained in the following appropriation acts:

Pub. L. 101-516, title III, §340, Nov. 5, 1990, 104 Stat. 2187.

Pub. L. 101-514, title V, §511, Nov. 5, 1990, 104 Stat. 2098.

Pub. L. 100-202, §109, Dec. 22, 1987, 101 Stat. 1329-434.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b-2, 10c, 10d, 42, 428 of this title; title 10 section 2533; title 15 sections 2507, 5528; title 19 sections 2512, 2513; title 20 section 6067; title 24 section 225h; title 25 section 1638b.

**§ 10b-1. Prohibition on procurement contracts; exceptions****(a) Federal contracts for goods or services of foreign origin**

A Federal agency shall not award any contract—

(1) for the procurement of an article, material, or supply mined, produced, or manufactured—

(A) in a signatory country that is considered to be a signatory not in good standing of the Agreement pursuant to section 2515(f)(3)(A)<sup>1</sup> of title 19; or

(B) in a foreign country whose government maintains, in government procurement, a significant and persistent pattern or prac-

tice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 2515(g)(1)(A) of title 19; or

(2) for the procurement of a service of any contractor or subcontractor that is a citizen or national of a foreign country identified by the President pursuant to section 2515(f)(3)(A)<sup>1</sup> or 2515(g)(1)(A) of title 19, or is owned or controlled directly or indirectly by citizens or nationals of such a foreign country.

**(b) Exceptions to prohibition**

The prohibition on procurement in subsection (a) of this section is subject to sections 2515(h) and 2515(j) of title 19 and shall not apply—

(1) with respect to services, articles, materials, or supplies procured and used outside the United States and its territories;

(2) notwithstanding section 2515(g) of title 19, to an eligible product of a country which is a signatory country unless that country is considered to be a signatory not in good standing pursuant to section 2515(f)(3)(A)<sup>1</sup> of title 19; or

(3) notwithstanding section 2515(g) of title 19, to a country that is a least developed country (as that term is defined in section 2518(6) of title 19).

**(c) Authority of President or Federal agency heads to authorize contracts**

Notwithstanding subsection (a) of this section, the President or the head of a Federal agency may authorize the award of a contract or class of contracts if the President or the head of the Federal agency—

(1) determines that such action is necessary—

(A) in the public interest;

(B) to avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(C) because there would be or are an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices; and

(2) notifies the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, and the appropriate committees of the House of Representatives, of such determination—

(A) not less than 30 days prior to the date of the award of the contract or the date of authorization of the award of a class of contracts; or

(B) if the agency's need for the service, article, material, or supply is of such urgency that the United States would be seriously injured by delaying the award or authorization, not more than 90 days after the date of such award or authorization.

**(d) Limitation on authority of Federal agency heads to authorize contracts**

The authority of the head of a Federal agency under subsection (c) of this section shall not

<sup>1</sup> See References in Text note below.